

Food is defined as any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice. See 86 Ill. Adm. Code 130.310(b)(1). (This is a GIL).

October 25, 2002

Dear Xxxxx:

This letter is in response to your letter dated August 15, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at www.revenue.state.il.us/Laws/regs/part1200/.

In your letter, you have stated and made inquiry as follows:

I am writing on behalf of a retailer. The retailer is requesting the sales taxability to customers on the items listed below:

1. Pulse Heart Health Formula - a water + nutrients supplement 'formulated to help maintain a healthy cardiovascular system.' Both flavors are non-carbonated and contain less than 2% juice.
2. Pulse Women's Health Formula - a water + nutrients supplement 'formulated to address the nutrition needs of women.' Both flavors are lightly carbonated and contain less than 2% juice.
3. Pulse Men's Health Formula - a water + nutrients supplement 'formulated to address the nutrition needs of men.' Both flavors are non-carbonated and contain less than 1% juice.

For your convenience I have attached a copy of the labeling for each product.

Thank you for your assistance in this matter.

In the context of a General Information Letter, we are unable to rule on the taxability of the various products you described in your letter. For your information, we have enclosed a copy of 86 Ill. Adm. Code 130.310, which is the Department's regulation for "Food, Drugs, Medicines and Medical Appliances." This regulation describes how sale of food and drugs can be subject to either low (1%) or high (6.25%) State tax rates under the Retailers' Occupation Tax Act. Local sales taxes may also apply, depending upon where retail sales are made.

As you can see, the regulation provides that food which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food which has been prepared for

immediate consumption), and prescription and non-prescription medicines, drugs, and various medical appliances are taxed at the State rate of 1% plus applicable local taxes.

All sales by retail establishments that provide facilities for on-premises consumption of food are subject to the high rate of tax unless the establishments utilize separate means of collection and physically partition the areas in which food not for immediate consumption is sold, 86 Ill. Adm. Code 130.310(b)(2)(A). If businesses do not provide facilities for on-site consumption, they must charge the high rate on all food sales if a majority (over 50%) of their gross receipts from food sales is for items sold in a state of preparation for immediate consumption (prepared by the retailer so as to be eaten without substantial delay after the final act of preparation). If a majority of their gross receipts from food sales is for items sold in bulk, they would charge the low rate on all food sales (except for hot foods, foods prepared by the retailer for immediate consumption, soft drinks and alcoholic beverages).

Food is defined as any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice. See 86 Ill. Adm. Code 130.310(b)(1). A medicine or drug is "any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities." (See Section 130.310(c)(1).)

Products that do not meet the appropriate definitions of food, drugs, medicines or medical appliances, or are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes. Soft drinks are always taxed at the higher rate. Soft drinks include any complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or sealed bottle, can, carton, or container regardless of size. Soft drinks do not include coffee, tea, non-carbonated water, various milk products, drinks containing 50% or more natural fruit or vegetable juice, powdered drink mixes or concentrated and reconstituted fruit juices. See Section 130.310 (b)(5).

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.